LIM KIM KEE v. KIN AIK PTE. LTD.

[A.C.J. (Sinnathuray J.), July 20, 1984]

[Singapore – District Court Appeal No. 49 of 1982]

Landlord & Tenant – Rent-controlled premises – Breach of statutory provisions – Recovery of possession – Control of Rent Act (Cap. 266), s. 15(1) (g).

The appellant was already a tenant of a rent-controlled terraced house No. 40, Petain Road ("the premises"), at a monthly rent of $49.60 when the respondents became owners of the premises some eight years ago. They discovered that one Madam Choo and her son were living in the front room of the first floor of the premises, paying the appellant $40 per month, inclusive of P.U.B. charges.

The respondents sued the appellant and obtained judgment for possession of the premises on the ground that the appellant had breached the provisions of s. 15(1) (g) of the Control of Rent Act.

The appellant raised two submissions in his appeal. First, he disputed the finding of fact on the area occupied by Madam Choo. Second, the learned District Judge did not consider that, as Madam Choo had ceased to live in the premises before the respondents commenced their proceedings, the appellant was not in breach of s. 15(1) (g) of the Act.

Held, dismissing the appeal: (1) on the appellant's second submission, the law applicable is in the decision of the Federal Court in Singapore in *S.E.A.C. Co.* v. *Ang Ah Bak*[2]. After the appellant had become a statutory tenant, he committed a breach of the provisions of the Act when in May 1979 Madam Choo moved into the premises and paid rent in excess of the maximum permitted under s. 15(1) (g) of the Act. At that point of time, the appellant lost the protection afforded to him as statutory tenant;

(2) the learned District Court Judge was right in disregarding the common areas in the premises and in holding that only the front room of the first floor was let to Madam Choo because she had exclusive possession thereof.

Cases referred to:

(1) *Che Esah & Anor.* v. *Che Limah* [1966] 1 M.L.J. 36.
(2) *S.E.A.C. CO.* v. *Ang Ah Bak* [1967] 1 M.L.J. 170.
(3) *Hardial Singh* v. *Lim Lye Huat* [1960] M. L.J. 240.

DISTRICT COURT APPEAL.

Goh Joon Seng for the appellant.
Joshua Lim for the respondents.

Cur. Adv. Vult.

Sinnathuray J.: This appeal relates to the recovery of possession of a rent-controlled terraced house, No. 40 Petain Road ("the premises"). The respondents bought the premises some eight years ago. At that time, the appellant was already a tenant of the premises at a monthly rent of $49.60 payable in advance.

After the respondents became the owners of the premises, they caused an investigation to be made on the occupants of the premises. It was discovered that one Madam Choo and her son were living in the front room of the first floor. She was paying the appellant $40 per month inclusive of PUB charges.

The respondents then brought these proceedings against the appellant. They obtained judgment in the District Court for possession of the premises on the ground that the appellant had committed a breach of the provision of section 15(1)(g) of the Control of Rent Act (Cap. 266) ("the Act"). The provision reads as follows:

> "where the tenant having sublet the premises or part thereof receives in respect of that subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per cent of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him;"

At the hearing of the appeal, counsel for the appellant raised two submissions. First, he disputed the finding of fact of the learned District Judge that the area occupied by Madam Choo (including a canvas bed space on the ground floor where her son slept at night) was "a little more than one-eighth, certainly not more than one-fifth of the total area of the premises". The other submission, which counsel said was not considered by the learned District Judge, was that as Madam Choo (and her son) had ceased to live in the premises before the respondents commenced these proceedings, the appellant was not in breach of section 15(1) (g) of the Act. Madam Choo and her son left the premises in about August 1980; these proceedings were commenced against the appellant in September 1980.

I shall first deal with the second submission.

In support of his submission that even if there was a breach by the appellant, as the breach had ceased before the proceedings were brought, the respondents cannot sue on the breach, counsel for the appellant relied on the *dictum* of Barakbah

C.J. of Malaya in *Che Esah & Anor* v. *Che Limah*[1]. In delivering the judgment of the Federal Court, the learned Chief Justice at page 37 said: "In my view, therefore, as the law applicable was the law as it existed at the date of the hearing, and as the tenancy was then protected by the provisions of the Control of Rent Ordinance, 1956, no order for possession could be made". The issue in that appeal was whether a widow of a tenant of a rent-controlled house who had remarried and left the place but had later returned to live in it was a protected tenant under the Control of Rent Ordinance, 1956. The facts were that after the tenant died, the tenancy was not terminated, no notice to quit was served on the legal representative of the deceased tenant or the Chief Justice. The only notice served was on the widow after she had resumed occupation of the house. It was in these circumstances that the Federal Court held that as at the date of the hearing the widow was in occupation of the house, she was protected by the provisions of the Control of Rent Ordinance, 1956.

As I view the facts in *Che Esah's* case, the widow was a protected tenant long before the date of the hearing of the action for recovery of possession in the Sessions Court. She had become a protected tenant when she resumed occupation of the rent-controlled house. The notice to quit served on her subsequently did not affect the status she had already acquired as protected tenant. In my view, this decision of the Federal Court has no application to the present appeal.

The law applicable to the facts in this appeal is to be found in the decision of the Federal Court in *S.E.A.C. Co.* v. *Ang Ah Bak*[2]. In that appeal which arose from an action for recovery of possession of two floors of a premises, the argument before the Federal Court in Singapore was that as the tenant had stopped receiving a rent in excess of the maximum permitted under section 15(1) (g) of the Act before his contractual tenancy was terminated, he was not in breach of the said provision and the landlord was not entitled to possession. Chua J., who delivered the judgment of the Court, having reviewed several decisions given by the Courts in Malaya (there being no reported decisions in Singapore), held that the learned Judge in the High Court was correct in holding that "a landlord's right of action for recovery of possession arises immediately upon the tenant subletting at a rent in excess of the maximum permitted under paragraph (g) of section 15(1)" of the Act.

In the present appeal, when the contractual tenancy of the premises was terminated in October 1978, the appellant was not in breach of section 15(1) (g) of the Act. It was only after the appellant became a statutory tenant, when in May 1979 Madam Choo moved into the premises and paid rent in excess of the maximum permitted under section 15(1) (g) of the Act that the appellant committed a breach of the provision of the Act. It was then that the cause of action for recovery of possession of the premises against the appellant vested in the respondents. In my opinion, it was at that point of time that the appellant lost the protection afforded to him as statutory tenant; thereafter he was no longer entitled to protection under the Act.

I now turn to the first submission. Counsel for the appellant agreed that, on the basis that the appellant retained possession of four-fifths of the premises, the learned District Judge had correctly applied the formula for calculating the recoverable rent to ascertain whether the appellant had infringed section 15(1) (g) of the Act: See *Hardial Singh* v. *Lim Lye Huat*.[3] I therefore do not have to review those calculations which entitled the respondents to obtain possession of the premises.

What was urged upon me was that I should review the findings made of the floor area of the premises occupied by the appellant after Madam Choo had moved into the premises. The premises consists of a ground floor and a first floor. The ground floor is about 1,293 square feet. The first floor is about 812 square feet. It is smaller than the ground floor because of the air-well in the premises which is about 480 square feet. The total floor area of the premises is therefore about 2,105 square feet. The learned District Judge found as a fact that Madam Choo occupied the front room on the first floor and that the floor area of the room was about equal in size to the other two rooms on the first floor. He also found that Madam Choo's son slept on a canvas bed on the ground floor occupying a floor space of about 18 square feet. By adding this bed space to the area of the front room of the first floor, the learned District Judge found that "Madam Choo and her son would have occupied a little more than one-eighth, certainly not more than one-fifth of the total area of the premises". On those findings, to ascertain whether the appellant had infringed the Act, the learned District Judge used for his calculations the figure most favourable to

the appellant, that Madam Choo occupied one-fifth of the premises.

The submission for the appellant was that as the learned District Judge had found that Madam Choo occupied half the floor area of the first floor, on the evidence that she had equal access to and enjoyment of the ground floor with the appellant and his family, he should have found that Madam Choo was in exclusive possession of half or at least 40% of the whole of the premises. The evidence relied upon by counsel for the appellant was that of the appellant that Madam Choo had access to the kitchen, toilet and bathroom in the premises; that she entertained her friends in the sitting room on the ground floor; that at times she ate with the appellant and his family in the dining room on the ground floor; and that she used the telephone and watched television downstairs. The point was made that had such a finding been made as submitted, on the formula already mentioned, the appellant would not be in breach of section 15(1) (g) of the Act.

Now, in his judgment, the learned District Judge has stated that the first consideration he had was to find out, in proportion to the whole of the premises, how much space had been "let out" to Madam Choo. In determining that floor area, he said: "Although she had access to other parts of the house, Madam Choo only occupied the front room in the first floor".

In my opinion, on the evidence before him, the learned District Judge was right in holding that only the front room on the first floor was let to Madam Choo because she had exclusive possession only of that room in the premises. Whilst Madam Choo had access to the common areas in the premises, those areas were in fact, "retained" by the appellant and were "not sublet" to Madam Choo (for the words in quotes, see section 15(1) (g) of the Act). Therefore, the learned District Judge had rightly disregarded the common areas in the premises and the other evidence of the appellant which related to the gratuitous use by Madam Choo of the ground floor of the premises in determining what part of the premises was sublet by the appellant to Madam Choo.

For the reasons I have given, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Chan Goh & Co.; Lee & Lim.*

HOWE YOON CHONG v. THE CHIEF ASSESSOR, SINGAPORE & ANOR.

[O.C.J. (Lai Kew Chai J.), October 24, 1984]
[Singapore – Originating Motion No. 53 of 1980]

Property tax – Annual value – Renovation – Increase in annual value – Administrative practice – Equal protection – Property Tax Act (Cap. 144), ss. 2, 17(4), 18(7), & 19(3) – Constitution of Singapore, art. 12(1).

In this case the appellant, Howe Yoon Chong, ("the owner"), is the owner of the subject property, a two-storey detached bungalow known as No. 9, Binjai Walk. It is the home of the owner and was built in 1966 on a site of 18,902 sq. ft. in a high class residential estate called Binjai Park. The property was ascribed an annual value of $2,400 on its completion in 1966. Following a general reassessment in 1970 of all properties in Binjai Park, the annual value of the property was raised to $8,400. Since the property was owner-occupied, the yearly property tax payable was $552, and the owner enjoyed the concessions granted by the Comptroller of Property Tax (the 2nd respondent) to all owner-occupiers in Singapore. In 1970 the Chief Assessor (the 1st respondent) ascribed to the building in the property the "reduced" area of 2,340 sq. ft., thus producing a unit rate of annual value of $3.59 per sq. ft.

In December 1975, the owner carried out substantial alterations and additions to the property at the cost of $48,000. The bedrooms increased from two to five, and the floor area had increased to 5,554 sq. ft. For the purpose of calculating the annual value, the reduced area was put at 4,526 sq. ft. The owner gave notice of the renovation works to the Chief Assessor under s. 17(4) of the Property Tax Act.

After receipt of this notice, the Chief Assessor by a letter dated August 23, 1976 gave the owner notice that he proposed amending the 1976 Valuation List by increasing the annual value of the property from $8,400 to $28,800 effective January 1, 1976. On the same day, the Comptroller gave notice under s. 19(3) of the Act that property tax of $1,224 per year was payable with effect from December 1, 1975. The Chief Assessor and the Comptroller both disallowed the owner's objections, whereupon the owner appealed to the Valuation Review Board. The Board dismissed his appeals based on three main issues, holding that (a) the Chief Assessor did not err in law and in fact in increasing the annual value of the property in comparison with other similar properties in Singapore, (b) the proposed annual value of $28,800 was not manifestly excessive or wrong in law and should not remain at $8,400, and (c) the proposed valuation or increased valuation of the property did not violate the Constitution or the Act.

Against that decision of the Board the owner appealed to the High Court. Unlike *Howe Yoon Chong* v. *Chief Assessor*[3] where the owner was unsuccessful in seeking to invalidate the entire valuation list, in the present case he complained that by reason of an aspect of the administrative practice of the Chief Assessor he had not been accorded the equal protection of the law under Article 12(1) of the Constitution, the supreme law of Singapore. The owner contended that he had retained his owner-occupier status at all mate-